

## REMARKS

Claims 1-22 are currently pending in this application. The Office has rejected claims 1-18 and 20-22 under 35 USC § 103(a) as being unpatentable by Ogasawara (U.S. Pat. No. 6,577,861) in view of Ortiz et al. (U.S. Pub. No. 2002/0042774; hereafter “Ortiz”). The Office rejected claim 19 under 35 USC § 103(a) as being unpatentable over Ogasawara in view of Ortiz and further in view of Sloane (U.S. Pat. No. 5,918,211). This is a non-final Office action and is responsive to Applicant’s communication filed on or about February 20, 2009.

### 103(a) Rejection of Independent Claims 1, 3, 4, 20 and 22 by Ogasawara & Ortiz

#### *Re: Claim 1:*

Applicant requires “a customer interface device at the checkout counter and in communication with the point-of-sale computer for alerting a customer to the existence of a promotion for an item scanned at the checkout counter by the point-of-sale computer and for transferring details of the promotion to the point-of-sale computer.” The Office asserts that Ogasawara discloses these requirements and states “See col 7, lines 10-24.... transmit promotional information. The combination of the telephone and the checkout terminal meet this claim limitation.” Applicant disagrees.

The cited passage of Ogasawara discloses a customer shopping in a store using a wireless telephone that scans bar codes on items for purchase and then sends the bar code information to a server that searches a database for a description and price for each item. The server may also send promotional information back to the customer’s wireless telephone and the server maintains a list of items being purchases. This cited teaching of Ogasawara fails to show Applicant’s requirements, as shown below.

Applicant requires a customer interface device at the checkout counter and in communication with the point-of-sale computer. However, Ogasawara teaches the customer’s wireless telephone is with the customer scanning items as the customer shops. This does not satisfy Applicant’s requirement for a customer interface device at the checkout counter. Furthermore, Ogasawara teaches that the telephone is communicating with a server. Applicant requires a customer interface device in communication with a

point-of-sale computer. Ogasawara's server does not equate to Applicant's point-of-sale computer. In addition, Applicant requires an item scanned at a checkout counter by a point-of-sale computer. However, Ogasawara teaches the telephone scans bar codes on items and that the scanning is performed as the customer shops; not at a checkout counter. Finally, Ogasawara teaches a server sends promotional information to the customer's wireless telephone. However, Applicant requires that a customer interface device transfers details of a promotion to a point-of-sale computer. In Ogasawara, the telephone does not transfer promotional information to a point-of-sale computer but receives promotion information from server. In each of the above cases, the cited teaching of Ogasawara fails to show or suggest the required elements of the claim.

In addition, there is no mention of a checkout terminal in the cited passage as the Office suggests, only a customer's wireless telephone and server. Ogasawara teaches the server is a store server and can even be "at a location remote from the store with which purchase transactions are performed." (Col. 3, lines 44-45.) Clearly, a server that is not located in the same store where a purchase takes place cannot be equated to a checkout terminal scanning items for the purchase of the items. The Office assertion of a checkout terminal in the cited passage is thus improper.

The Office has failed to establish a *prima facie* case of obviousness because it has failed to establish that Ogasawara shows or suggests all the elements of Applicant's claimed invention. The rejection is therefore improper and Applicant requests that it be withdrawn and all claims allowed.

Applicant requires "a point-of-sale computer at a checkout counter for processing a purchase of items presented to the checkout counter for scanning and identification by the point-of-sale computer." The Office asserts that Ogasawara discloses these requirements and cites col. 1, line 65 – col. line 6. Applicant disagrees. Ogasawara discloses, "a personal shopping system (PSS) wherein the purchaser carries a scanner embedded hand-held terminal within a store. Bar codes of products to be purchased are scanned with the hand-held scanner. ... Payment for the scanned products is accomplished at a checkout counter in a conventional manner." A hand-held terminal that a purchaser carries around within a store is by its very description not located at a

checkout counter and is not a point-of-sale computer, as required by Applicant. Furthermore, a hand-held terminal carried by the purchaser does not become a point-of-sale computer just because it is brought into proximity with a checkout counter. It is still a purchaser's hand held terminal and not a point-of-sale computer. The Office further states "A customer can well bring all of their items in a shopping cart and do the scanning at the check out counter." (Office Action, page 2 – page 3.) This assertion is mere supposition by the Office as the actions are not disclosed by Ogasawara nor are they consistent with the intended use of the device. Even if the action were disclosed, bringing the hand-held terminal in proximity to a checkout counter does not turn it into a point-of-sale computer. Clearly, Ogasawara's hand-held terminal that a purchaser carries around within a store is not the same as or equivalent to a point-of-sale computer at a checkout counter. The passage cited by the Office fails to disclose the required elements.

For any or all of the above reason, the Office has failed to establish a *prima facie* case of obviousness because it has failed to show that the prior art of record shows or make obvious all the elements of Applicant's claimed invention. Therefore, the rejection is improper and Applicant requests that it be withdrawn.

Re: Claim 3:

Applicant requires "determining that the customer is presenting items for identification and purchase at a checkout counter." The Office asserts that Ogasawara discloses these elements and cites col. 5, line 47 for support. Applicant disagrees. The passage cited by the Office discloses a "checkout" function, which is the act of paying for the items that have already been scanned, in this case by using a wireless telephone. The passage does not teach identifying items for purchase but instead teaches how the telephone and checkout terminal can identify each other. This passage fails to show the elements required by Applicant.

Applicant requires "receiving item identification information at the customer interface device for items presented at the checkout counter for purchase." The Office asserts that Ogasawara discloses these elements and cites col. 5, lines 38-41. Applicant disagrees. The cited passage discloses a wireless telephone that functions as a personal

shopping terminal with a bar code reader that scans items. The telephone then sends scanned bar code information from items to a server and receives information from the server on the items. This is not what Applicant requires. The telephone is both scanning items and receiving information about the items. However, Applicant requires a customer interface device for receiving item information for items presented at the checkout counter for purchase. The items are not presented to customer interface device for purchase as is taught by this passage from Ogasawara. Therefore, this passage fails to show the elements required by Applicant.

Applicant requires “displaying a message to the customer informing the customer that the customer is to receive the promotion for an item presented at the checkout counter for purchase.” The Office asserts that Ogasawara discloses these elements and cites col. 7, lines 10-23. Applicant disagrees. This cited passage teaches the wireless telephone scans the items and displays promotional information. However, Applicant requires the items to be presented to the checkout counter for purchase. This element is missing from the cited passage. Therefore, this passage fails to show the elements required by Applicant.

For any or all of the above reason, the Office has failed to establish a *prima facie* case of obviousness because it has failed to show that the prior art of record shows or make obvious all the elements of Applicant’s claimed invention. Therefore, the rejection is improper and Applicant requests that it be withdrawn.

*Re: Claim 4, 20 and 22:*

The rejections for these claims are improper for one or more of the same reasons given above for the other independent claims.

#### 103(a) Rejection of Independent Claim 19 by Ogasawara in View of Sloane

Sloane teaches a system and method for influencing and potentially altering a consumer’s purchase decisions at the point-of-purchase in a retail store using a portable bar code scanner. (See Sloane abstract.) Sloane’s teachings also fail to show or suggest the above elements missing from the passages cited by the Office.

The Office has failed to establish a *prima facie* case of obviousness because it has failed to provide evidence that the references show or suggest all the required elements of Applicant's claimed invention. The rejection is therefore improper and Applicant requests that it be withdrawn.

#### Dependent Claims

The remaining dependent claims are allowable for at least the same reasons as the corresponding independent claim.

#### Office Response to Applicant's Arguments

The Office asserts that "Ogasawara discloses the telephone as a 'point-of-sale' computer via col 5, lines 29054, in which the telephone and the checkout terminal become linked, taking broadly to become 'integrated/one component/one checkout terminal', thereby resolving the argument that the telephone is not a point-of-sale computer." (Office Action, Page 12, section 6.) Applicant disagrees and traverses this analysis.

The Office appears to want the telephone of Ogasawara to be multiple devices all at the same. Applicant requires both a point-of-sale computer and a customer interface device. Specifically, Applicant requires "a point-of-sale computer at a checkout counter for processing a purchase of items presented to the checkout counter for scanning and identification by the point-of-sale computer." (Claim 1) The Office looks to the telephone to scan the items and serve as a point-of-sale computer. However, Applicant requires a point-of-sale computer located at a checkout counter and that it processes a purchase of items presented to the checkout counter for scanning and identification by the point-of-sale computer. This is not that Ogasawara teaches. Ogasawara teaches the customer scans items as shopping is conducted. Shopping is not conducted at a checkout counter. Ogasawara does teach the use of a checkout terminal but not for scanning items. The checkout terminal is used only when the customer finishes shopping and for the purpose of effecting payment. (See Col. 5, lines 44-53.) The scanning of items is not performed at the checkout terminal, as required by Applicant. Therefore, neither the

telephone nor the checkout terminal, as disclosed by Ogasawara, equate to the required elements.

Additionally, Applicant requires a “a customer interface device at the checkout counter and in communication with the point-of-sale computer for alerting a customer to the existence of a promotion for an item scanned at the checkout counter by the point-of-sale computer.” The Office also wants the telephone to be Applicant’s customer interface device. Again, the telephone cannot be both a customer interface device and a point-of-sale computer, as required by Applicant. The Office cited the following passage for a teaching of the customer interface device for alerting a customer to the existence of a promotion, “the server may additionally transmit ... promotional information ... to the customers’ wireless telephone.” (Col. 7, lines 20-23.) Clearly, the Office is equating the telephone to Applicant’s customer interface device. However, this assertion is improper because the telephone does not satisfy Applicant’s requirements for a customer interface device, as shown next.

Applicant requires “a customer interface device at the checkout counter and in communication with the point-of-sale computer for alerting a customer to the existence of a promotion for an item scanned at the checkout counter by the point-of-sale computer.” The customer interface device must be in communication with the point-of-sale computer for alerting a customer to the existence of a promotion for an item scanned at the checkout counter by the point-of-sale computer. The Office cannot have it both ways. If the telephone is equated to the customer interface device, then the items are not being scanned by a point-of-sale computer. If the telephone is a point-of-sale computer, then the customer is not alerted by a customer interface device about a promotion. A single device simply cannot be two different devices that communication with each other, as required by Applicant. The Office’s argument is therefore improper.

## CONCLUSION

Applicant asks the Office to reconsider this application and allow all pending claims. Please charge any fees that might be due, excluding the issue fee, to deposit account 14-0225.

Respectfully submitted,

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